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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

NOTE.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

NORFOLK & W. RY. CO. v. COFFEY.

Sept 26, 1905.

[51 S. E. 729.]

PLEADING—ADDITIONAL PLEADINGS—FILING IN VACATION—NOTICE TO ADVERSE PARTY.

1. Though there is no statutory provision authorizing it, the court may permit additional pleadings to be filed in vacation; but, when an additional pleading is so filed, the counsel of the adverse party ought to be given notice of the application therefor and an opportunity to resist it, or to procure leave to file other pleadings and make up the issue.

FAILURE OF PLAINTIFF TO REPLY TO PLEA—APPLICATION BY DEFENDANT FOR JUDGMENT.

2. Where a plaintiff fails to reply to a plea within the time prescribed by law or the order of the court, defendant should apply for a rule to compel him to do so, or, in default, to suffer judgment of *non prosequitur*.

TRIAL—DEMURRER TO EVIDENCE.

3. After issue was joined on the plea of not guilty in an action for negligence, defendant obtained leave to file a plea of limitations, and liberty was granted plaintiff to reply. Defendant during vacation filed the plea, but no issue was taken by plaintiff. Plaintiff's counsel obtained for the first time on the argument of the demurrer to the evidence knowledge of the existence of the plea, and he was taken by surprise. *Held*, that the court of its own motion should have set aside the demurrer to the evidence and the award of damages thereon, and caused issues to be made up on the plea, and ordered a new trial.

PLEADING—DEFECTS—STATUTE OF JEOfAILS.

4. The statute of jeofails does not, in an action at law, cure the non-joinder or want of issue, and no verdict or judgment can properly be rendered therein.

RISQUE'S ADM'R v. CHESAPEAKE & O. RY. CO.

September 26, 1905.

[51 S. E. 730.]

RAILROADS—INJURY TO LICENSEE—NEGLIGENCE.

1. Where a railroad company furnished defective cars to the employer of plaintiff's intestate for use upon the employer's side track, to be loaded and unloaded upon such side track, it was the employer's duty to inspect the cars for defects, and the railroad company was not liable for the death of plaintiff's intestate caused by such defective cars.

CONTRIBUTORY NEGLIGENCE.

2. Where plaintiff's intestate, who was operating a switch engine upon private tracks, backed his engine upon the track of defendant railroad com-